

22 March 1955

MEMORANDUM FOR: Deputy Assistant Director for Personnel

SUBJECT : Payment of Overseas [] Differential
to [] on TDY

REFERENCE : Memorandum from DAD/P, Same Subject, Dated
19 January 1955

1. Your memorandum requests the opinion of this office as to whether [] may be allowed the pay differential appropriate to [] for a period of temporary duty in that country of 52 days.

2. [] was sent TDY to [] for a contemplated period of not less than 60 days. He actually spent 52 days in the country, dividing his time between three unspecified cities there. Doubt as to his eligibility for the differential arises from consideration of such parts of the Standardized Regulations (Government Civilians, Foreign Areas) as are interpreted to require that eligibility is a function of the requisite time having been spent at one post. And it appears to have been concluded in some quarters that, because [] divided his time between three different "posts", he is ineligible for the differential.

3. We cannot agree that the regulations are to be interpreted as to require that, other conditions having been met, eligibility for the differential turns on the amount of time spent at a given post. A review of the regulations, particularly paragraph 115g, reveals "post" and "area" to be used both singly and in the alternate. So far as is relevant here, we feel that where "post" appears alone, post or area is meant. This interpretation is in keeping with the theory of the grant of a foreign post differential. According to Executive Order 10,000, dated September 16, 1948 (13 F.R. 5453), the theory of the grant is that it is intended as compensation for serving the United States in countries in which living is characterized by either extraordinarily difficult conditions, excessive physical hardship or notably unhealthful conditions, or any combination of these. While the grant has been described as a "recruitment incentive", we do not think this to be an exclusive definition, i.e., one which would exclude the applicability of a foreign post differential to persons other than those recruited specifically to serve in foreign countries for years at a time. Such definition would fly in the face of section 115 of the Standardized Regulations (Government Civilians, Foreign Areas), which authorizes the differential in certain circumstances of temporary duty. Likewise it would overlook the fact that unhealthful or hazardous living conditions in a given country do

not distinguish between those Americans there on permanent duty and those there on temporary duty in excess of 60 days.

25X1 4. However, payment in [] case is dependent upon an additional factor. Paragraph 143 provides that, where the period of duty is for:

" . . . a period less than 60 calendar days, payment shall not be made in the absence of the required personnel documentation."

25X1 Pursuant to paragraph 115g, the "required personnel documentation" consists of a determination by the head of the agency concerned that the contemplated duration of the temporary assignment of temporary duty was for not less than 60 calendar days. We are of the opinion that this determination is one proper for the chief of the operating division having jurisdiction over [] to make.

25X1 5. On the basis of the foregoing, it is the opinion of this office that if the appropriate operating division chief is to determine that at the time at which [] was sent to [] on TDY, it was estimated that he would be so assigned for a period of not less than 60 days, which determination is made to appear in his travel orders, then [] may receive the country-wide differential payment authorized for [] for the period of his stay there. Should such determination already appear as part of the travel orders, no further action in this regard is required of the division chief.

[]
Office of General Counsel

OGC:HF:ss

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